

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company	:		
(Ameritech Illinois) and US	:		
Ave-Tel, Inc.	:		
	:	01-0567	
Joint Petition for Approval of an	:		
Interconnection Agreement dated	:		
March 30, 2001, pursuant to 47	:		
U.S.C. §252.	:		
	:		
Illinois Bell Telephone Company	:		
(Ameritech Illinois) and US	:	01-0568	(Consolidated)
Ave-Tel, Inc.	:		
	:		
Joint Petition for Approval of a	:		
First Amendment to	:		
Interconnection Agreement dated	:		
March 30, 2001, pursuant to 47	:		
U.S.C. § 252.	:		
	:		
Illinois Bell Telephone Company	:	01-0569	
(Ameritech Illinois) and US	:		
Ave-Tel, Inc.	:		
	:		
Joint Petition for Approval of a	:		
Second Amendment to	:		
Interconnection Agreement dated	:		
March 30, 2001, pursuant to 47	:		
U.S.C. § 252.	:		

**ORDER**

By the Commission:

**PROCEDURAL HISTORY**

On August 24, 2001, in Docket No. 01-0567, Illinois Bell Telephone Company ("Ameritech") and US Ave-Tel, Inc. ("US Ave-Tel") filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking the Commission's approval of a negotiated interconnection agreement ("Interconnection Agreement" or "Agreement") dated March 30, 2001, pursuant to Sections 252(a)(1) and 252(e) of the

federal Telecommunications Act of 1996 ("TA 96"), 47 U.S.C. 151 et seq. A copy of the Agreement was filed with the joint petition.

On August 24, 2001, in Docket Nos. 01-0568 and 01-0569, Ameritech and US Ave-Tel also filed verified joint petitions seeking the Commission's approval of a First Amendment and a Second Amendment to their Agreement ("amendments").

Also attached to the joint petition were statements in support of the joint petitions from Melvin Flowers, Area Manager–Negotiations for Southwestern Bell Telephone Company/Illinois Bell Telephone Company Negotiations and Interconnection.

Pursuant to due notice, these matters came on for hearing before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois. Appearances were entered by respective counsel on behalf of Ameritech and the Commission Staff ("Staff"). The Verified Statements of Olusanjo Omoniyi, a Policy Analyst in the Commission's Telecommunication's Division, were admitted into the record. In his Verified Statements, Mr. Omoniyi recommended approval of the Agreement, and amendments thereto, subject to certain conditions regarding implementation. At the conclusion of the hearing, the record was marked "Heard and Taken." No petitions to intervene were received, and no other appearances were entered. Thereafter, the three dockets were consolidated.

## **SECTION 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

Section 252(a)(1) of TA 96 allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to Section 251.

Section 252(a) of TA 96 provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) “available for public inspection and copying within 10 days after the agreement or statement is approved.”

Section 252(i) requires a local exchange carrier to “make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”

## **PURPOSE AND TERMS OF THE INTERCONNECTION AGREEMENT**

The Petitioners represent that US Ave-Tel adopted, in its entirety, the terms of an agreement between Ameritech and Focal Communications Corporation of Illinois. The Agreement between Ameritech and US Ave-Tel establishes financial and operational terms for the interconnection of their respective telecommunications networks and facilities. Among other things, the Agreement contains terms applicable to unbundled access by US Ave-Tel to Ameritech’s network elements; physical collocation; number portability; resale; and a variety of other business relationships.

The Interconnection Agreement will remain in effect until August 19, 2003. Following that date, the Agreement will continue in effect for additional one-year periods unless either party gives the other party at least 120 days written notice of termination.

In the First Amendment to the Agreement, dated March 30, 2001, modifications to the Agreement include the addition of provisions regarding unbundled element platform (UNE-P), and revisions to the pricing schedule. In the Second Amendment to the Agreement, dated March 30, 2001, Appendix OSS is added to the Agreement.

## **STAFF RECOMMENDATION**

Staff reviewed the Agreement and amendments thereto in light of the criteria contained in Section 252(e)(2)(A) of TA 96. Under this section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection (a) if it finds that (i) the agreement, or portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity.

With regard to the issue of discrimination, Staff’s position continues to be that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if telecommunications traffic is exchanged between it and Ameritech for termination on

each other's networks and if it imposes costs on Ameritech that are no higher than costs imposed by US Ave-Tel. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory. Staff also states that Section 252 (i) of the Act allows a similarly situated carrier to enter into essentially the same agreement. In this proceeding, Staff found no reason to conclude that the Agreement is discriminatory. The Commission concurs with Staff's position.

With regard to the public interest, convenience and necessity, Staff recommends that the Commission examine the Agreement and amendments on the basis of economic efficiency, equity, past Commission orders and state and federal law. Staff asserts that all the services in the Agreement are priced at or above their respective long run service incremental costs ("LRSICs"), and thus should be considered economically efficient. Staff concluded, and the Commission agrees, that implementation of the Agreement, and the amendments to it, would be consistent with the public interest.

Concerning the implementation of the Agreement and amendments, Staff recommended that the Commission require Ameritech, within five days from the date the Agreement is approved, to modify its tariffs to reference the Agreement as amended for each service. Staff stated that this requirement is consistent with the Commission's orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommended that such references be included in the following section of Ameritech's tariffs: Agreements with Telecommunications Carriers (ICC No. 21, Section 19.15).

In addition, Staff recommended that the Commission require Ameritech to file a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement as amended is the same as the Agreement and amendments filed in this docket with the verified joint petition. Staff further recommended that the Commission direct the Chief Clerk to place the Agreement as amended on the Commission's web site under "Interconnection Agreements." The Commission concludes that Staff's recommendations regarding implementation of the Agreement are reasonable and should be adopted.

## **FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Ameritech and US Ave-Tel are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., which provide telecommunications services as defined in Section 13-203 of the Act;

- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) the Agreement and amendments do not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest; nor is the Agreement as amended inequitable, inconsistent with past Commission orders, or in violation of state or federal law;
- (5) in order to assure that the implementation of the Agreement as amended is in the public interest, Ameritech should implement the Agreement and amendments by filing a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement and amendments are the same as the Agreement and amendments filed in this docket with the verified joint petitions; the Chief Clerk should place the Agreement and amendments on the Commission's web site under "Interconnection Agreements";
- (6) within five days of the entry of this Order, Ameritech should modify its tariffs to reference the Agreement as amended in the manner recommended by Staff and described in the prefatory portion of this Order above;
- (7) the Agreement and amendments should be approved as hereinafter set forth;
- (8) approval of this Agreement and amendments does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Agreement between Ameritech and US Ave-Tel, dated March 30, 2001, and the First Amendment and Second Amendment to the Agreement, also dated March 30, 2001, are hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Ameritech shall comply with Findings (5) and (6) hereinabove.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 24th day of October, 2001.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)